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JUN 27 2008

Appln. No.: 10/085,910
Response dated June 27, 2008
Reply to Office Action of May 29, 2008

REMARKS/ARGUMENTS

The Office Action of May 29, 2008, has been carefully reviewed and these remarks are responsive thereto. Claims 1, 3-42 and 44 remain pending. No new subject matter has been added. Reconsideration and allowance of the application are respectfully requested.

Rejections Under 35 U.S.C. § 112

Claims 24-30 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, the referenced claims are rejected based on the recitation of a "computer-readable storage media storing executable instructions." This rejection is traversed.

The instant application is directed to computers and electronic arts. One of skill in the art would readily appreciate that computers, and the processors they contain, may be configured to support execution of instructions on computer-readable media. A specification need not disclose what is well-known to those skilled in the art, and preferably omits that which is well-known to those skilled and already available to the public. *See, e.g., In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991). *See also* MPEP § 2163.04 (providing that the standard of determining compliance with the written description requirement is assessed based on whether a person skilled in the art would recognize in an applicant's disclosure a description of the invention defined by the claims) (citing *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976)). Accordingly, Applicants respectfully request withdrawal of the section 112 rejection.

Rejections Under 35 U.S.C. § 103

Claims 1, 6-8, 21, 23-29, 31, 33-38, 41, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson (U.S. Pat. No. 5,513,246) in view of Chen (U.S. Pat. No. 6,731,936), and further in view of Malek (U.S. Pat. No. 5,822,313).

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Ahopelto (U.S. Pat. No. 5,970,059).

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Official Notice.

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Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Taketsugu (U.S. Pat. No. 5,420,863).

Claims 9-14, 16, 18-20, and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jonsson in view of Chen, and further in view of Makinen (U.S. Pat. No. 5,764,700).

Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Doshi (U.S. Pat. No. 5,936,965).

Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Doshi.

Claims 40 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Malek.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Lim (U.S. Pat. No. 6,766,168).

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Lim.

These rejections are traversed for at least the following reasons.

Independent claim 9 recites, among other features, "an election module for switching reception of the mobile terminal from the first wireless transmitter to the second wireless transmitter after reception of said first transmission burst has been completed and before a consecutive second transmission burst is received from said second wireless transmitter." The Office Action at page 17 asserts that Jonsson at col. 5, line 40 – col. 11, line 42 and Figure 1e and/or Chen at col. 8, lines 54-57 and col. 7, lines 62-67 discloses features related to switching reception before a consecutive second transmission burst is received from a second wireless transmitter. Applicants disagree that the cited passages of Jonsson and Chen (or any passages of the references, for that matter) disclose the above-noted features. Instead, Jonsson merely describes a cellular mobile radiotelephone system wherein a locating routine checks to see if there is a better cell in terms of lower path loss or greater signal strength than a present (servicing) cell, and if there is a better cell than the present cell, a mobile services center tries to

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allocate a channel in the better cell, and if successful, a handover is attempted. See Jonsson at Abstract and col. 10, line 3 – col. 11, line 45. Chen at col. 8, lines 44-57 describes a soft handoff process that is inapplicable to the above-noted features because the recited election module switches reception of the mobile terminal from the first wireless transmitter to the second wireless transmitter, whereas the soft handoff process in Chen combines the synchronous transmissions of multiple sectors.

The Office Action at page 3 (“Response to Arguments”) (paragraph 5) attempts to address Applicants’ previous remarks with respect to the above-noted features, but mischaracterizes the nature of Applicants’ previous remarks. More specifically, the above-noted features as recited in claim 9 impose a temporal requirement that the election module perform the switching after reception of a first transmission burst has been completed and before a consecutive second transmission burst is received from a second wireless transmitter. The remarks in the Office Action at page 3 (“Response to Arguments”) (paragraph 5) merely discuss hard and soft handoff, without regard to the features related to performing the switching after reception of a first transmission burst has been completed and before a consecutive second transmission burst is received from a second wireless transmitter as required by claim 9. Chen at col. 7, lines 62-67 describes a hard handoff process wherein a monitoring of a first channel is discontinued before a monitoring of a second channel begins (“break before make”), but Chen is silent with respect to temporal features required by claim 9. Stated another way, even assuming (without admitting) that the disclosure in Chen at col. 7, lines 62-67 may appropriately be analogized to the features of switching reception of a mobile terminal from a first wireless transmitter to a second wireless transmitter, Chen fails to disclose such switching taking place after reception of a first transmission burst has been completed and before a consecutive second transmission burst is received from a second wireless transmitter. Accordingly, because the applied references are wholly devoid of any such teaching or suggestion (notwithstanding whether the combination of applied references is proper), claim 9 is allowable for at least the foregoing reasons.

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Independent claim 24 recites, among other features, one or more computer-readable storage media storing executable instructions that, when executed by a processor, cause a device to “switch reception *by the digital broadcast receiver* from the first digital video broadcasting wireless transmitter to a second digital video broadcasting wireless transmitter of the plurality of wireless transmitters *after reception of said first transmission burst has been completed and before a consecutive transmission burst is sent by the synchronized first and second digital video broadcasting wireless transmitters.*” The Office Action at page 8 asserts that Malek at col. 6, lines 31-35, col. 3, lines 56-67 and col. 4, lines 10-14 discloses the recited features. Even assuming (without admitting) that one or more passages of Malek may appropriately be analogized to the above-noted features as recited in claim 24, Applicants submit that the combination of Malek with Jonsson and Chen is improper for substantially similar reasons as discussed in Applicants’ Amendment dated February 27, 2008, at page 15. Applicants incorporate those remarks herein by way of reference.

In short, Malek is directed to a TDMA controller which communicates on the basis of a bi-directional TDMA protocol. Conversely, claim 24 is directed to a computer-readable media storing executable instructions that, when executed, cause a device to receive at a digital broadcast receiver included in the device a digital video broadcasting information from a plurality of synchronized digital video broadcasting wireless transmitters (e.g., a uni-directional communication protocol). The Office Action at pages 2-3 (“Response to Arguments”) (paragraph 4) asserts that Malek is being used “only” to show the common and well known technique of using different frequencies between neighbor base stations to avoid channel interference.

Applicants refer the Office to MPEP § 2141.02 (VI. Prior Art Must Be Considered In Its Entirety, Including Disclosures That Teach Away From The Claims) (providing that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention) (emphasis in original). Accordingly, even assuming (without admitting) that cited passages in Malek may appropriately be analogized to the recited features when read in isolation, the Office is still required to read Malek as a whole, and under such a reading, Malek teaches away from the above-noted features as recited in claim 24 for at least the

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reasons discussed above. As such, because the combination of references is improper, claim 24 is allowable.

Moreover, claim 24 recites features similar to those described above with respect to claim 9. As such, claim 24 is allowable for at least reasons substantially similar to those described above with respect to claim 9.

Independent claim 1 recites, among other features, "receiving at a mobile terminal a first digital video broadcasting signal broadcast by a first wireless transmitter at a first frequency . . . the mobile terminal deriving digital video broadcasting signal data from a second digital video broadcasting signal broadcast by a second wireless transmitter . . ." The Office's reliance on Malek in combination with the other applied references is improper for at least substantially similar reasons as discussed above with respect to claim 24 because the above-noted features as recited in claim 1 relate to receiving a first digital video *broadcasting* signal and deriving digital video broadcasting signal data from a second digital video *broadcasting* signal. As discussed above, Malek is directed to a TDMA controller which communicates on the basis of a bi-directional TDMA protocol, rendering the Malek technology incompatible with the technology of claim 1. Accordingly, claim 1 is allowable over the applied references.

Independent claim 16 recites features similar to those described above with respect to claim 9. Claim 16 is allowable for at least substantially similar reasons.

Independent claim 21 recites features related to broadcasting technologies, and as such, the combination of Malek with the additional applied references is improper for at least reasons substantially similar to those discussed above with respect to claim 1. As such, claim 21 is allowable over the applied references for at least those same reasons.

Moreover, independent claim 21 recites, among other features, ". . . when said second bit-error rate is less than said quasi-error-free value, *the mobile terminal . . . switching reception to said second wireless transmitter.*" Contrary to the assertions in the Office Action at page 11, Jonsson fails to teach or suggest such features. Instead, Jonsson at col. 9, lines 1-7 discloses that

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a mobile services center performs a locating function, and that base stations merely try to effectuate the decision of the mobile services center with regard to handoff. Jonsson at col. 10, lines 3-29 and Figure 5a discloses that the locating function/routine checks to see if there is a better cell in terms of lower path loss or greater signal strength, and if so, a handover operation is attempted. Accordingly, in Jonsson the switching is performed at the mobile services center, as opposed to at a mobile terminal as required by claim 21. Furthermore, one of skill in the art would not have had an apparent reason to modify Jonsson to include functionality to perform the switching at the mobile terminal because doing so would result in an inefficient duplication of computing resources (e.g., the computing resources would then be located at both the mobile terminal and the mobile services center). Accordingly, claim 21 is allowable over the applied references for at least these additional reasons.

Furthermore, as acknowledged in the Office Action at page 2 ("Response to Arguments") (paragraph 3), Jonsson (at col. 10, line 3 – col. 11, line 45) does not implement a bit error rate quality metric as required by claim 21. Instead, Jonsson relies on a measurement of signal strength, from which a path loss may be calculated, to serve as the determinant as to whether to engage in a handover operation. The Office Action relies on Chen at col. 8, lines 10-13, 28-32 to allegedly disclose the features specifically related to bit error rate (BER). Even assuming (without admitting) that the disclosures in the cited passages of Chen may appropriately be analogized to the bit error rate features, the combination of Jonsson and Chen in this respect is improper. Applicants refer the Office to MPEP § 2143.01 (VI. The Proposed Modification Cannot Change The Principle Of Operation Of A Reference) (providing that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious). In Jonsson, the path loss and signal strength measurements/calculations serve as the principle of operation because the measurements/calculations are used in preparing a handover candidate list. See Jonsson at col. 11, lines 1-18 and Figure 7. Modifying Jonsson with the disclosures of Chen would impermissibly modify this basis of operation. Accordingly, claim 21 is not rendered obvious over Jonsson in view of Chen.

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Independent claim 31 recites features similar to those described above with respect to claim 24, and is allowable for at least reasons substantially similar to those discussed above with respect to claim 24.

Independent claim 36 recites features similar to those described above with respect to claim 21. Claim 36 is allowable for at least those same reasons.

The dependent claims are allowable for at least the same reasons as their respective base claims because any of the additional reference(s) fail to cure the deficiencies of the references applied to the base claims.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the examiner believes the application is not in condition for allowance or there are any questions, the examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,

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